

STATE OF MICHIGAN  
IN THE SUPREME COURT

TRI-COUNTY INTERNATIONAL TRUCKS,  
INC., a Michigan corporation and  
IDEALEASE OF FLINT, a Michigan  
corporation,

Plaintiffs/Appellees,

Supreme Court Docket No.  
130671

v

Lenawee County Circuit Court  
Case No. 02-986-CK

HILLS' PET NUTRITION, INC., a  
Michigan corporation,

Court of Appeals Docket  
No. 255695

Defendant/Appellant.

JOHN R. MONNICH (P23793)  
Attorney for Plaintiffs/Appellees  
225 S. Main Street, 2<sup>nd</sup> Floor  
Royal Oak, Michigan 48067  
(248) 548-4747

BRIAN D. EINHORN (P13130)  
NOREEN L. SLANK (P31964)  
Attorney for Defendant/Appellant  
4000 Town Center, Suite 909  
Southfield, Michigan 48075  
(248) 355-4141

**PLAINTIFFS/APPELLEES' SUPPLEMENTAL BRIEF**  
**IN RESPONSE TO DEFENDANT/ APPELLANT'S**  
**APPLICATION FOR LEAVE TO APPEAL**

LAW OFFICES  
JOHN R. MONNICH, P.C.  
225 S. MAIN STREET  
SECOND FLOOR  
ROYAL OAK, MICHIGAN 48067  
(248) 548-4747

Law Offices of John R. Monnich, P.C.  
By: John R. Monnich (P23793)  
Attorney for Plaintiffs/Appellees  
225 S. Main Street, 2<sup>nd</sup> Floor  
Royal Oak, Michigan 48067  
(248) 548-4747

**FILED**

SEP - 1 2006

CORBIN R. DAVIS  
CLERK  
MICHIGAN SUPREME COURT

130671  
Errata  
attached

## TABLE OF CONTENTS

	<u>PAGE(S)</u>
Index of Authorities . . . . .	-iii-
Statement of Questions Presented . . . . .	-iv-
Standard of Review . . . . .	-v-
Introduction . . . . .	1
Concise Statement of Certain Relevant Facts . . . . .	3
Argument	
<b>I.     <u>Tri-County is an Authorized Member as Defined in the "LEASE".</u></b> . . . . .	7
<b>A.     The way the LEASE works.</b> . . . . .	7
<b>B.     Authorized Members.</b> . . . . .	9
<b>C.     Tri-County is an Authorized Member. . . .</b>	11
<b>II.    <u>The "ADDENDUM TO MASTER AGREEMENT DATED 2/21/92" Does Not Serve to Relieve Hills' Pet from its Indemnity Obligation.</u></b> . . . . .	12
<b>A.     Paragraph 10 does not exclude Tri-County.</b>	12
<b>B.     Contracts which Indemnify for Indemnitees' Negligence are Enforceable.</b> . . . . .	13
<b>C.     The Majority Decision of the Court of Appeals and the Dissent Failed to Appreciate the Nature of the Summary Disposition.</b> . . . . .	14
<b>D.     Tri-County is Entitled to Insurance Coverage.</b>	15
Relief Requested . . . . .	16

## INDEX OF AUTHORITIES

<u>Cases</u>	<u>PAGE(S)</u>
<i>Fischback-Natkin, Co v Power Process Piping, Inc.</i> , 157 Mich App 448; 403 NW2d 569 (1987) .....	13
<i>Grossman v Brown</i> , 470 Mich 593, 598; 685 NW2d 198 (2004) ..	-v-
<i>Henderson v State Farm Fire &amp; Cas Co</i> , 460 Mich 348, 353; 596 NW2d 190(1999) .....	-v-
<i>Ormsby v Capital Welding, Inc.</i> , 255 Mich App 165, 192; 660 NW2d 730; <i>rvsd on other grounds</i> , 471 Mich 45, 684 NW2d 320 (2005)	13
<i>Paquin v Harnishberger</i> , 113 Mich App 43; 317 NW2d 279 (1982)	14
<i>Quinto v Cross &amp; Peters, Co</i> , 451 Mich 358, 362-3; 547 NW2d 314 (1996) .....	-v-
<i>Wausau Underwriters Ins Co v Ajax Paving Industries, Inc.</i> , 256 Mich App 646,655; 671 NW2d 539 (2003) .....	15
<i>Woodard v Custer (Woodard I)</i> , 473 Mich 1, 5; 702 NW2d 522 (2005)	-v-
 <u>Court Rules</u>	
MCR 2.605 .....	1

**STATEMENT OF QUESTIONS PRESENTED**

- I. IS TRI-COUNTY AN AUTHORIZED MEMBER AS DEFINED IN THE "LEASE".

PLAINTIFFS/APPELLEES say the answer is "YES.

DEFENDANT/APPELLANT says the answer is "NO".

- II. DOES THE "ADDENDUM TO MASTER AGREEMENT DATED 2/21/92" SERVE TO RELIEVE HILLS' PET NUTRITION, INC. FROM ITS INDEMNITY OBLIGATION.

PLAINTIFFS/APPELLEES say the answer is "YES.

DEFENDANT/APPELLANT says the answer is "NO".

## STANDARD OF REVIEW

This is a test of motions for summary disposition. De Novo review is the standard. Woodard v Custer (*Woodard I*), 473 Mich 1, 5; 702 NW2d 522 (2005); Grossman v Brown, 470 Mich 593, 598; 685 NW2d 198 (2004). Joint counter motions for summary disposition in declaratory judgment actions are subject to a more balanced consideration of the facts by the Court. This is not a situation in which one party moves for summary disposition for the purpose of having a claim dismissed against him or her. In such a case the Court considers the evidence in the light most favorable to the party opposing the motion. Quinto v Cross & Peters, Co., 451 Mich 358, 362-3; 547 NW2d 314 (1996). In this case, the parties have essentially said to the Court “we have the proofs we can find and we have settled the injury case. Decide this based on what we have.” This can be done because interpretation of contracts and duties under a contract are legal questions for the Court to decide. Henderson v State Farm Fire & Cas Co., 460 Mich 348, 353; 596 NW2d 190 (1999)

## INTRODUCTION

This Court ordered that Supplemental Briefs may be filed but only on the specific issue of “whether defendant was under a duty to indemnify Tri-County.” The Order is attached as Exhibit “A”. The Opinion of the Michigan Court of Appeals is attached as Exhibit “B” and the Order of the Trial Court is attached as Exhibit “C”.

This question tests the language of the “VEHICLE LEASE AND SERVICE AGREEMENT” (hereinafter “LEASE”). Tri-County International Trucks, Inc. (hereinafter referred to as “Tri-County”) was not a party to the “RENTAL AGREEMENT AND INVOICE” (hereinafter “RENTAL”) and its terms are not at issue for this narrow question.

The Plaintiffs/Appellees and the Defendant/Appellant sought declaratory relief in this case pursuant to MCR 2.605. The decision-making vehicle as anticipated was summary disposition. Each side filed its Motion requesting the contract be interpreted consistently with its position. The parties in interest have that status for different reasons. Hills’ Pet Nutrition, Inc. (hereinafter “Hills’ Pet” ) is a signatory to the contract. Idealease of Flint (hereinafter referred to as “Idealease”) and Tri-County are designated in the contract not by name but by a descriptive word that describes its relationship to the equipment leased which is “Owner” and “Authorized Member” respectively. Although Tri-County and Idealease are Plaintiffs/Appellees and Hills’ Pet is the Defendant/Appellant, their insurance companies have the real financial interest in this case. Harco National Insurance Company and Universal Underwriters Group

have paid the Plaintiffs/Appellees' share of the settlement in the underlying injury case and claim Defendant/Appellant should pay them back. Travelers Insurance Company is the insurer of Hills' Pet and takes the position their claim is invalid.

This is the history of the decisions made thus far (as it pertains to Tri-County, only):

- I. In the Lenawee County Circuit Court, Judge Timothy Pickard presiding.
  - A. Tri-County's Motion for Indemnity pursuant to "LEASE" was denied and Hills' Pet's Counter Motion was granted.
  - B. Tri-County's Motion for breach of contract on account of failure to provide insurance was denied and Hills' Pet's Counter Motion was granted.
- II. In the Michigan Court of Appeals, Cavanagh, P.J., Smolenski and Zahra:
  - A. Tri-County's Motion for Indemnity pursuant to "LEASE" was granted and Hills' Pet's Counter Motion was denied. Judge Zahra dissented to this conclusion.
  - B. Tri-County's Motion for breach of contract on account of failure to provide insurance was denied and Hills' Pet's Counter Motion was granted.

## CONCISE STATEMENT OF CERTAIN RELEVANT FACTS

This narrow case reviews the ruling of the Michigan Court of Appeals found in Exhibit "B" and summarized in the INTRODUCTION. This short statement is a supplement to the facts in the prior briefing.

Tri-County and Idealease are owned by the same parent company, C & S Motors. Todd Fracalossi, an officer and family member-shareholder of C & S Motors, stated on page 9 of his deposition taken on November 4, 2002 and attached as Exhibit "D", beginning at line 9:

"Q. Tri County, the Delaware corporation, do you have stock in that? You said your father is the president of that, is that true?

A. Yes. I don't think so

Q. All right. Idealease of Flint?

A. I don't think so. I think the stock is held by C & S Motors for each company.

Q. Okay. C & S is a parent corporation owning the stock of Tri County and Idealease of Flint as far as you know?

A. Yes."

Tri-County's function was to do maintenance work on the trucks leased to Hills' Pet on behalf of Idealease. Mr. Fracolossi said on page 16 of his deposition (Exhibit "D") beginning at line 15:



“Q. Warranty work as I understand would be sent to Tri County?

A. Correct.

Q. Major work would be sent to Tri County?

A. Correct.”

The “LEASE” was and is a negotiated document. (See deposition of Daniel Murphy taken on December 11, 2003, attached as Exhibit “E”, page 5). It has been in effect since 1992 and the parties had no problems operating under its terms and probably still do. A look at Exhibit “F”, the Contract and its Addenda, shows it has many strikeouts and was the product of protracted negotiations between Idealease’s president Dan Murphy, and Jerry Alawine and David Durtsche for Hills’ Pet. (Murphy Deposition, Exhibit “E”, pgs. 5 and 6). Since it is the product of both parties, it is not the type of contract the Court can construe against either.

The injury case in which Bruce Head was injured was caused by a coincidence of factors, some of which were the product of negligence. You know Mr. Head was injured because his steering failed at the exact moment a cement truck was approaching. The head-on collision had tragic effect. Discovery led to claims being filed against the various parties as follows:

A. Against Tri-County for approving the release of a vehicle with a loose steering linkage nut.

B. Against Idealease for releasing the truck which had been red tagged because repairs had not been completed by Tri-County.

C. Against Hills' Pet because:

1. The driver who drove the truck the trip before Bruce Head did not follow company policy and advise the dispatcher the truck had a safety issue deficiency because they were busy and he came home late.
2. It was not enforcing the Federal and State law requiring the drivers to inspect the steering linkage and fill out a specific safety questionnaire before each trip.<sup>1</sup>

D. Against Bruce Head for failure to inspect the steering linkage on the truck before his trip in violation of Federal and State Law and failed to fill out the specific safety questionnaire prior to his departure on the date of the accident.

---

1

The allegations that Hills' Pet violated the Federal and State laws and regulations are significant. Section 5A of the LEASE states:

“Customer acknowledges and agrees to the following:

- A. Each Vehicle shall only be used in the normal and ordinary course of Customer's business and not in violation of any laws or regulations . . . . Customer shall indemnify and hold Lessor, all Authorized Members, Owner, and IDEALEASE, INC., harmless from any claim, loss or damage arising out of any such violation. . . .” (Emphasis added).

This indemnity provision is independent of any obligation under Section 10.

There was no clear winner of the “who was the most negligent” issue but the injury case was settled with consideration of all these factors at facilitation. The release documents all contained non-admission statements.

My presentation of the working of the “LEASE” is going to be in the Argument section. The parties do not agree how the “LEASE” works.

## ARGUMENT

### **I. Tri-County is an Authorized Member as Defined in the "LEASE".**

#### **A. The way the LEASE works.**

This is a contract for leasing a fleet of trucks. (LEASE, Section 1A). It is a national contract and there are many different Idealease affiliates all over the United States renting trucks to Hills' Pet under the terms of this LEASE. This one involves Michigan. Hills' Pet is the Lessee and is the person who is going to utilize the trucks. (LEASE, Section 1B). There is no term of the LEASE itself. The equipment provided, however, is provided for a definite period of time which is included in Schedule A, an addendum to the LEASE which described the equipment and the time it is leased. (LEASE, Section 2; Schedule A). Idealease, although always designated the "Lessor" does not actually do the renting. The LEASE provides at Section 5M:

"Lessor is a wholly (sic) owned subsidiary of IDEALEASE, INC., an Illinois trade association. The members of Idealease, Inc ("Members") are independently owned truck leasing companies. Lessor intends to contract with one or more of the Members for the performance of the duties and obligations of Lessor under this Agreement. Each Schedule A to this Agreement shall indicate the Member authorized to perform the services for the Vehicles listed on that Schedule A (the "Authorized Member"). IDEALEASE, INC. owns none of the Vehicles. Neither IDEALEASE, INC. nor any of the Members are a party to, or assume liability (sic) under, this Agreement." (Emphasis added).

In this way, the individual dealerships become the implementers of the truck providing and repair obligations of the contract. They do not "assume liability" under this

agreement although there is nothing that restricts them from receiving benefits such as insurance coverage from it.

The Lessor provides, as part of the rental, routine maintenance for the vehicle such as oil changes as well as replacement of normal wear and tear items such as tires. (LEASE, Section 3A). If a truck breaks down from use, Lessor repairs it and provides a warranty for its repairs. (LEASE, Section 3B). It provides a substitute vehicle if the repairs take longer than “ordinary service time.” (LEASE, Section 3F). If, however, the vehicle is involved in an accident, the rules are different. (LEASE, Section 4F(2) and (6). Section 4F states in its last sentence that “Except as otherwise provided herein, all rights and obligations of Customer hereunder regarding a Vehicle shall apply to any substitute, replacement, interim or additional vehicle.” (Emphasis added). “Otherwise provided” includes the requirements that lessee must rent a vehicle out of Lessor’s fleet at higher rates (not specified but described as “rates set forth in Paragraph 4H”) plus it must continue to pay the LEASE for the damaged truck. The charges do not abate while the truck is in for repair. (Section 4F, second to the last sentence). In other words, Hills’ Pet is paying for two trucks when ordinarily it has one. A separate contract is executed for this purpose which in Idealease’s case is called the “RENTAL AGREEMENT AND INVOICE.” I have attached it as Exhibit “G”. It contains separate payment rates, insurance information from the Lessee, and the same terms implemented for any member of the public who rents a truck from Idealease. (It does rent trucks to the public and other accounts). This is because the “LEASE” requires Hills’ Pet pay the market rental price for a truck from Idealease’s fleet, independent of the price of the

LEASE. The additional contract is the document the driver shows to the police if he/she is stopped to show right to possession. These provisions are important because the truck that Bruce Head was driving was a substitute that was in Hills' Pet's possession because the regular truck had previously been involved in an accident and was out of service for collision repair.

The idea is that all persons affiliated with the actual vehicle, including substitutes, are indemnified.

**B. Authorized Members.**

This term is not defined in the contract. To some extent it is described. Section 10 describes who is indemnified:

“Customer agrees to indemnify and hold Lessor, Owner, IDEALEASE, INC., and all Authorized Members harmless from and against:

- A. Any claim or cause of action for death or injury to persons or loss or damage to property, arising out of or caused by the ownership, maintenance, use or operation of any Vehicle covered by this Agreement.”

One conclusion that can be drawn is that an “Authorized Member” is someone other than Lessor, Owner and Idealease. In this case, the Lessor is identified in the contract as Idealease Services, Inc., a subsidiary of Idealease. The “Owner” of the vehicle is clearly Idealease of Flint, Inc. (See Section 5P) Tri-County is the organization who was charged with the maintenance of the vehicle that was involved in the accident. Since subsection A. of the indemnity provision clearly anticipates indemnity for “injuries . . .” “caused by . . .” “maintenance . . .” it is reasonable to

conclude the maintenance provider is included as an "Authorized Member". There is further support for the proposition that "Authorized Member" includes the maintenance provider. Section 5C states:

"All repairs, alterations and adjustments to Vehicles will be made by Authorized Members or other parties authorized by Lessor. When repairs are necessary, Customer will notify the Authorized Member or Lessor immediately. Lessor will not be responsible for the costs of repairs or services not expressly authorized by Authorized Member or Lessor. Customer must submit acceptable vouchers for authorized repairs and services."

This paragraph says that repairs can be made by someone other than an Authorized Member but only if that other party is "authorized" by Idealease Services, Inc. In our case, Tri-County was the maintenance arm of Idealease and performed its function totally independent of any direction by Idealease Services, Inc.

The status of Authorized Member includes the maintenance provider but is not limited to it. For example, Section F states in pertinent part:

"Vehicles shall be promptly returned to Lessor at the Authorized Member's facility upon the expiration or cancellation of this Agreement  
..."

There are similar provisions in the LEASE in which an Authorized Member is described as the provider of the vehicles, including but not limited to Section 4F(5), 5J and 5L. This only means the provider and the maintainer of the vehicle are protected by the indemnity and insurance requirements accepted by Lessee whether or not they are the owners of the vehicle. They may not be the same person.

**C. Tri-County is an Authorized Member.**

The proof is the proof. Hills' Pet has never come forth with facts saying that Tri-County was not an Authorized Member in this case. The witnesses attest to the fact it is. Daniel Murphy, an officer of Idealease testified at pages 51 and 52 of his deposition (Exhibit "E") :

"Q. Do you know whether or Tri-county was ever designated an authorized member for any purpose under this contract which is Exhibit 1?

A. Under here?

Q. Yeah.

A. Yeah.

Q. Do you agree that it is an authorized member for purposes of that contract?

A. That it is?

Q. Yes.

A. Yes."

Todd Fracalossi, testified in an Affidavit on 1/29/04 which I attach as Exhibit

"H":

"6. TRI COUNTY INTERNATIONAL TRUCKS, INC. was an 'authorized member' under the terms of the national contract for all times relevant to this case."



I have also attached as Exhibit "T", a copy of an e-mail with attachments that was attached to my original Motion for Summary Disposition in the Trial Court as Exhibit D. The e-mail indicates that Tri-County is an "Authorized Member" and is paying dues to be an "Authorized Member." There is no contradictory evidence suggested by Hills' Pet because it is a notorious fact.

**II. The "ADDENDUM TO MASTER AGREEMENT DATED 2/21/92"  
Does Not Serve to Relieve Hills' Pet from its Indemnity Obligation.**

Hills' Pet contends that Paragraph 10 of this ADDENDUM excepts Tri-County from its indemnity obligation. Tri-County disagrees. It states in pertinent part<sup>2</sup>:

"Customer agrees to indemnify and hold Lessor, Owner, IDEALEASE, INC, and all Authorized Members harmless from and against:

- A. Any claim or cause of action for death or injury to persons or loss or damage to property, arising out or caused by the ownership, maintenance, use or operation an any Vehicle covered by this Agreement. ('Lease' language) Unless (sic) such action is proved to be the direct responsibility or negligence of the Lessor . . . ('Addendum' language)."

**A. Paragraph 10 does not Exclude Tri-County.**

The indemnity obligation is very specific to mention Lessor, Owner, Idealease, and all Authorized Members as the indemnitees and also is very specific as to who the

---

I included the language from the body of the "LEASE" and then added the language from the Addendum so it reads as a complete statement.

exception contained in paragraph 10 applies to. It applies to the “Lessor.” The Lessor is Idealease Services, Inc. Section M, previously quoted, states: “Neither IDEALEASE, INC. nor any of the Members are a party to, or assume liability (sic) under, this Agreement.” Clearly “Lessor” is not Tri-County.

**B. Contracts which Indemnify for Indemnitees’ Negligence are Enforceable.**

Hills’ Pet agreed to indemnify and hold Lessor, Owner, Idealease, and all Authorized Members harmless from and against any claim or cause of action according to Section 10A. Insofar as Idealease is concerned, it may be excluded from this provision if “such action” is proved to be its “direct responsibility or negligence.” This is the agreement as written which the Court is required to follow. Ormsby v Capital Welding, Inc., 255 Mich App 165, 192; 660 NW2d 730; *rvsd on other grounds*, 471 Mich 45, 684 NW2d 320 (2005). A contract which indemnifies one against the consequences of his or her own act is subject to strict construction under Michigan law but is enforceable. In the case of Fischback-Natkin, Co v Power Process Piping, Inc., 157 Mich App 448; 403 NW2d 569 (1987) the court provided the test at page 455:

“Therefore, we conclude that the situation of the parties and the circumstances surrounding the contract reveals that the parties intended that plaintiff be indemnified for damages or injuries caused by its own negligence. The language of the indemnity provision is broad and clear, encompassing *all* liability for injuries, including death and all property damage. In light of the situation surrounding the parties and the contract in this case, we find that the trial judge did not err in concluding that, as a matter of law, no ambiguity exists concerning the intent of the parties to indemnify plaintiff for its own negligence.”

Accord is found in *Paquin v Harnishberger*, 113 Mich App 43; 317 NW2d 279 (1982). This is not a case involving the sole negligence of Tri-County. There were several parties that were negligent and specific negligence was assessed against Idealease in an arbitration proceeding between these two parties in the injury case.

**C. The Majority Decision of the Court of Appeals and the Dissent Failed to Appreciate the Nature of the Summary Disposition.**

The Appeals Court said the reason Tri-County was entitled to “Authorized Member” status was because its name appeared on a Schedule A sometime in the past and the indemnity language required applied to “all” Authorized Members. Judge Zahra dissented saying the majority placed too much emphasis on the word “all.” I believe the majority has a basis for its conclusion providing the strictest contract construction is applied. The reason for relying solely on the contract language is a conscious one to avoid questions of fact because such a finding requires sending the matter back to the Trial Court. It was anticipated this case would be decided in favor of one party or the other without the necessity of trial. Summary disposition is the vehicle used to make this decision but it is essentially a bench trial. The contract says what it says and the facts are as developed as they are going to be so credibility is not an issue. This matter is secondary to an injury case in which factual development and credibility were all the rage. In this case, the dust has settled and we have the “LEASE,” some testimony from an officer of Idealease, an Affidavit and a statement for dues. There is no person from Hills’ Pet who provided proof in the form of testimony and documents to the effect that Tri-County was not an Authorized Member, or that it did not do the repairs on the truck

in question. We do have testimony from persons who know that say it was and this is the proof of the matter. The Appeals Court focus on the word “all” is somewhat myopic in light of the totality of facts that were put before it.

**D. Tri-County is Entitled to Insurance Coverage.**

I know the Supreme Court did not specifically say to address this argument but the same reasoning as to “Authorized Member” status applies to insurance coverage. The Michigan Court of Appeals determined that because the word “all” does not appear in front of “Authorized Member”, Tri-County could not persevere in this argument. A contractual obligation to procure insurance is considered separate and distinct from the obligation to indemnify. Wausau Underwriters Ins Co v Ajax Paving Industries, Inc. 256 Mich App 646,655; 671 NW2d 539 (2003). It is ever so clear in this case that Hills’ Pet was responsible for indemnifying both the organization which provided the vehicles and the organization which repaired the vehicles because that is what the “LEASE” says was supposed to happen. See discussion with Idealease officer, William Kennedy, whose deposition was taken on December 11, 2003 and is attached as Exhibit “J”, pages 33 and 34.

**RELIEF REQUESTED**

Plaintiffs/Appellees pray that this Honorable Court affirm the Opinion of the Court of Appeal of October 25, 2005 and deny Defendant/Appellant's Application for Leave to Appeal.

LAW OFFICES OF JOHN R. MONNICH, P.C.

By: 

John R. Monnich (P23793)  
Attorney for Plaintiffs/Appellees  
225 S. Main Street, 2<sup>nd</sup> Floor  
Royal Oak, Michigan 48067  
(248) 548-4747

Dated: August 31, 2006

LAW OFFICES  
JOHN R. MONNICH, P.C.  
225 S. MAIN STREET  
SECOND FLOOR  
ROYAL OAK, MICHIGAN 48067  

---

(248) 548-4747

LAW OFFICES OF JOHN R. MONNICH, P.C.

CHARTERED PROPERTY  
AND CASUALTY UNDERWRITER

CHARTERED LIFE  
UNDERWRITER

225 S. MAIN STREET  
SECOND FLOOR  
ROYAL OAK, MICHIGAN 48067  
jmonnichjdpc@ameritech.net  
(248) 548-4747  
(248) 548-4748 (FAX)

DIANE C. SUTHERLAND  
LEGAL ASSISTANT

September 30, 2006

Clerk of the Court  
Michigan Supreme Court  
Michigan Hall of Justice  
925 W. Ottawa  
Lansing, Michigan 48915

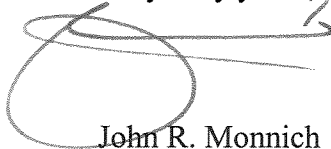
130671  
enata  
Re: Tri-County International Trucks, Inc. v Hills' Pet Nutrition, Inc., Lower Court  
Case No. 02-986-CK, Court of Appeals Docket No. 255695, Supreme Court  
Docket No. 130671

Dear Clerk:

J  
Enclosed please find eight (8) copies of a corrected "STATEMENT OF QUESTIONS  
PRESENTED" page from Plaintiffs/Appellants' Supplemental Brief which was filed with this Court  
on August 31, 2006.

Thank you.

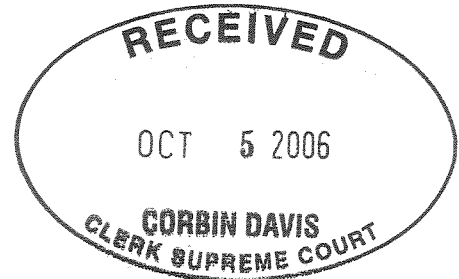
Very truly yours,



John R. Monnich

JRM/ds  
Enclosure

cc: Brian D. Einhorn, Esq./Noreen L. Slank, Esq.  
Clerk/Michigan Court of Appeals  
Clerk/Lenawee County Circuit Court



**STATEMENT OF QUESTIONS PRESENTED**

- I. IS TRI-COUNTY AN AUTHORIZED MEMBER AS DEFINED IN THE "LEASE".

PLAINTIFFS/APPELLANTS say the answer is "YES".

DEFENDANT/APPELLEE says the answer is "NO".

- II. DOES THE "ADDENDUM TO MASTER AGREEMENT DATED 2/21/92" SERVE TO RELIEVE HILLS' PET NUTRITION, INC. FROM ITS INDEMNITY OBLIGATION.

PLAINTIFFS/APPELLANTS say the answer is "NO".

DEFENDANT/APPELLEE says the answer is "YES".